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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 WILLIAM CECIL THORNTON,  
12 CDCR #V-64547,

13 Plaintiff,

14 vs.  
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16 MICHAEL SHANAHAN, CDCR Adult  
17 Parole Agent; MARIA DOMINGUEZ,  
18 CDCR Adult Parole Agent; RONALD  
EDWARDS, San Diego Sheriff Sgt.,

19 Defendants.  
20  
21

Civil No. 14cv1465 BTM (RBB)

**ORDER:**

**(1) DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AS BARRED BY  
28 U.S.C. § 1915(g)  
[ECF Doc. No. 2]**

**AND**

**(2) DISMISSING CIVIL ACTION  
WITHOUT PREJUDICE FOR  
FAILURE TO PAY FILING  
FEE REQUIRED BY  
28 U.S.C. § 1914(a)**

22 William Cecil Thornton (“Plaintiff”), proceeding pro se and currently incarcerated  
23 at Valley State Prison, in Chowchilla, California, has filed a civil rights complaint  
24 pursuant to 42 U.S.C. § 1983. Plaintiff claims two state parole agents and a San Diego  
25 County Sheriff’s Department Sergeant arrested him on October 17, 2013, for failing to  
26 timely register as a sex offender in order to retaliate against him for having filed a  
27 previous lawsuit. *See* Compl. (ECF Doc. No. 1) at 3-5. Plaintiff seeks injunctive relief  
28 “restraining” one of the defendants as well as general and punitive damages. *Id.* at 8.

1 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);  
 2 instead, he has submitted a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to  
 3 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

# 4 I.

## 5 MOTION TO PROCEED IFP

6 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
 7 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). “Prisoners,” like Plaintiff, however,  
 8 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full  
 9 amount of a filing fee,” in installments as provided by 28 U.S.C. § 1915(a)(3)(b), the  
 10 Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege  
 11 to proceed IFP:

12 . . . if [a] prisoner has, on 3 or more prior occasions, while  
 13 incarcerated or detained in any facility, brought an action or  
 14 appeal in a court of the United States that was dismissed on  
 15 the grounds that it is frivolous, malicious, or fails to state a  
 claim upon which relief can be granted, unless the prisoner is  
 under imminent danger of serious physical injury.

16 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
 17 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter  
 18 “*Andrews*”).

19 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”  
 20 *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter  
 21 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful  
 22 suits may entirely be barred from IFP status under the three strikes rule[.]”). The  
 23 objective of the PLRA is to further “the congressional goal of reducing frivolous  
 24 prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir.  
 25 1997). “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed  
 26 both before and after the statute’s effective date.” *Id.* at 1311.

27 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,  
 28 which were dismissed on the ground that they were frivolous, malicious, or failed to state

1 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the  
2 district court styles such dismissal as a denial of the prisoner’s application to file the  
3 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153  
4 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited by  
5 section 1915(g) from pursuing any other IFP action in federal court unless he can show  
6 he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g);  
7 *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which  
8 “make[] a plausible allegation that the prisoner faced ‘imminent danger of serious  
9 physical injury’ at the time of filing.”).

## 10 II.

### 11 APPLICATION TO PLAINTIFF

12 As an initial matter, the Court has carefully reviewed Plaintiff’s pleading and has  
13 ascertained that it contains no “plausible allegation” to suggest he “faced ‘imminent  
14 danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055  
15 (quoting 28 U.S.C. § 1915(g)). Instead, Plaintiff’s alleges two state parole agents and  
16 a San Diego County Sheriff’s Department Sergeant arrested him in late 2013 and filed  
17 a “false report” charging him with failing to timely register as a sex offender in order  
18 to retaliate against him for having filed a previous lawsuit in 2010. *See* Compl. at 3-5.

19 A court “‘may take notice of proceedings in other courts, both within and without  
20 the federal judicial system, if those proceedings have a direct relation to matters at  
21 issue.’” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*  
22 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel.*  
23 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.  
24 1992).

25 Thus, this Court takes judicial notice that Plaintiff, William Cecil Thornton,  
26 CDCR #V-64547, has had more than three prior prisoner civil actions dismissed on the  
27 grounds that they were frivolous, malicious, or failed to state a claim upon which relief  
28 may be granted.

1 They are:

2 1) *Thornton v. Neotti, et al.*, S. D. Cal. Civil Case No. 3:10-cv-1677-LAB-  
3 BGS (S.D. Cal. January 3, 2011 Order Dismissing Second Amended Complaint for  
4 Failing to State a Claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)) (ECF  
5 Doc. No. 13); and (May 17, 2012 Mandate of USCA affirming the decision of the  
6 USDC) (ECF Doc. No. 22) (strike one);

7 2) *Thornton v. Cate, et al.*, S. D. Cal. Civil Case No. 3:10-cv-1585-JLS-PCL  
8 (S.D. Cal. June 28, 2011 Order Sua Sponte Dismissing Second Amended Complaint for  
9 Failing to State a Claim pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)) (ECF Doc.  
10 No. 30); and (Dec. 16, 2011 Order of USCA dismissing appeal pursuant to Ninth Circuit  
11 Rule 42-1) (ECF Doc. No. 38) (strike two);

12 3) *Thornton v. Cavalin, et al.*, S.D. Cal. Civil Case No. 3:11-cv-0108-BEN-  
13 CAB (S.D. Cal. July 19, 2011 Order Dismissing First Amended Complaint as Frivolous  
14 pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b) (ECF Doc. No. 7); and (Dec. 13,  
15 2011 Order of USCA dismissing appeal pursuant to Ninth Circuit Rule 42-1) (ECF Doc.  
16 No. 13) (strike three);

17 4) *Thornton v. Cavalin, et al.*, S.D. Cal. Civil Case No. 3:11-cv-2309-MMA-  
18 PCL (S.D. Cal. Jan. 9, 2012 Order Granting Motion to Proceed *In Forma Pauperis* and  
19 Dismissing Complaint as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b))  
20 (ECF Doc. No. 3); (April 11, 2012 Order of USCA finding appeal frivolous and  
21 directing appellate to pay \$455 fee or face dismissal for failing to prosecute) (ECF Doc.  
22 No. 9); and (May 10, 2012 Order of USCA dismissing appeal pursuant to Ninth Circuit  
23 Rule 42-1) (strikes four and five); and

24 5) *Thornton v. Deddeh*, S.D. Cal. Civil Case No. 3:11-cv-2401-LAB-KSC  
25 (S.D. Cal. Jan. 17, 2012 Order Granting Motion to Proceed *In Forma Pauperis* and  
26 Dismissing Civil Action as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b))  
27 (ECF Doc. No. 5); (May 10, 2012 Order of USCA finding appeal frivolous and directing  
28 appellant to pay \$455 fee or face dismissal for failing to prosecute) (ECF Doc. No. 11);

1 and (June 19, 2012 Order of USCA dismissing appeal pursuant to Ninth Circuit Rule  
2 42-1) (ECF Doc. No. 13) (strikes six and seven).

3 Accordingly, because Plaintiff has, while incarcerated, accumulated more than  
4 the three “strikes” permitted pursuant to § 1915(g), and he fails to make a “plausible  
5 allegation” that he faced imminent danger of serious physical injury at the time he filed  
6 his Complaint, he is not entitled to the privilege of proceeding IFP in this action. *See*  
7 *Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (finding that 28 U.S.C.  
8 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes  
9 prisoners with a history of abusing the legal system from continuing to abuse it while  
10 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)  
11 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

### 12 III.

#### 13 CONCLUSION AND ORDER

14 For the reasons set forth above, the Court hereby:

15 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF Doc. No. 2) as barred by  
16 28 U.S.C. § 1915(g);

17 (2) **DISMISSES** this action sua sponte without prejudice for failing to prepay  
18 the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a);<sup>1</sup> and

19 (3) **CERTIFIES** that an IFP appeal from this Order would also be frivolous  
20 and therefore, not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See*  
21 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,

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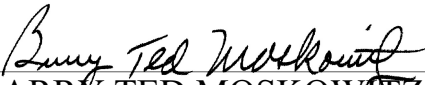
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24 <sup>1</sup> If Plaintiff wishes to pursue his claims, he must commence a new and separate  
25 civil action by filing a complaint pursuant to FED.R.CIV.P. 3 which is accompanied by  
26 the \$400 in civil and administrative filing fees required by 28 U.S.C. § 1914(a). Plaintiff  
27 is further cautioned that because he is not eligible to proceed IFP, he will also not be  
28 entitled to the U.S. Marshal service authorized by 28 U.S.C. § 1915(d) and FED.R.CIV.P.  
4(c)(3). Finally, because Plaintiff is a prisoner, any complaint he files will be subject  
to the screening required by 28 U.S.C. § 1915A(a) and dismissed sua sponte if it is  
found frivolous or malicious, if it fails to state a claim, or if it seeks monetary relief from  
a defendant who is immune, regardless of whether he has paid the full filing fee. *See*  
*Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C.  
§ 1915A(b) screening requirements).

1 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if  
2 appeal would not be frivolous).

3 The Clerk shall close the file.

4 **IT IS SO ORDERED.**

5 DATED: October 9, 2014

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7 BARRY TED MOSKOWITZ, Chief Judge  
8 United States District Court  
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